

1 Q On June 30th?

2 A Yes, that is correct.

3 Q That is a difference of. Let me ask you. When you
4 sent an invoice to Medex was that, is that price below your
5 cost for that item? The T2500 at \$199.50; is that below your
6 cost?

7 A Okay. This is an invoice from Medex to Tuffcare.
8 So, most likely the situation is that Medex returned some
9 product to Tuffcare.

10 Q Okay. And they returned it at the same price for
11 which they had been invoiced for the product.

12 A To my understanding it should be that way, but I am
13 not sure.

14 Q Okay. Let me go to the Dealer's price list, number
15 5 and 6; and look at another item. The T2000 bed, and that
16 appears there, 1 to 5 units for \$483, correct?

17 A Yes.

18 Q And 6 or more units at \$459?

19 A Yes.

20 Q And that would be the price that Graham Field would
21 pay for that product after; excuse me, for that product, unless
22 it was buying a large quantity of that product. Correct?

23 A Yes, that is correct.

24

25

1 Q Would you look at Exhibit 5, the list that you gave
2 to Sara Figueroa. On that list the T2000 bed is indicated as
3 paying \$369 for 50 to 99 units. Correct?

4 A Yes.

5 Q And \$358 for 100 to 499 units?

6 A Yes.

7 Q And \$347 for 500 or more units?

8 A Yes.

9 Q Okay. Now, I would like to show you another invoice.
10 I would like to show you an invoice dated November 24, 1997.
11 And I'll ask you to identify that.

12 ATTY ARTURO NEGRON

13 That would be Exhibit 7. Am I correct?

14 ATTY KENNETH MCCULLOCH

15 Is that an invoice from Tuffcare to Medex?

16 CALVIN CHANG

17 Yes.

18 Q Now, on this invoice the same T2000 bed is invoiced
19 for a unit price; they were 80 units and the unit price was
20 \$229.50, is that correct?

21 A Yes.

22 Q How did you get the price for \$229.50 for this
23 invoice?

24
25

1 A Well, this is the price for the bed at that time.
2 For 1997. And the price for 1998, when we make the
3 distributor's price, the price went up.

4 Q But, as of August of 1997 isn't it true that you told
5 Vicente Guzmán that the price for the T2000 bed was \$369?

6 A I am not sure of when was that?

7 ATTY ARTURO NEGRON

8 Excuse me, the date was?

9 ATTY KENNETH MCCULLOCH

10 August of 1997, prior to this.

11 CALVIN CHANG

12 I am not sure. I need to look at my documents.

13 Q What document will tell you what?

14 A Well, the correspondence between me and Mr. Guzmán.

15 Q Did you have any correspondence were you sent him
16 prices for products in writing?

17 A I don't remember.

18 Q Did you ever send anything to Graham Field indicating
19 to them if they could buy the T2000 bed for \$229.50?

20 A No, but I did mention to Vicente that if they
21 purchase all the beds from us, we can keep him the same price
22 that we gave to Medex.

23 Q When did you say that?

24 A Probably in 1997, but I am not sure of the exact year
25 and date; about around that time.

1 A You don't have to shout, okay.

2 Q How is the person going to know what his price is
3 going to be?

4 A How many units they want to order for the year. Then
5 they would get a certain price. I mean, they can place an
6 order of one thousand units, and we ship them 50 units at the
7 time. But, they would still get the 500 plus price.

8 Q So, you were giving a price. Medex was getting a
9 price different then what was literally indicated on this thing
10 because you had a separate deal with Medex?

11 A Well, this deal applied to Graham Field also. We
12 sent Graham Field a letter stating they can place the order; a
13 blanket order for the whole year and get the 500 plus. And
14 Sarah knows about this.

15 Q Okay. You were under a court order to charge the
16 same prices to both Medex and Graham Field. Weren't you?

17 A Yes, which we offered the same to both companies.

18 Q Did you send this confidential Distributor's Price
19 List to Medex?

20 A Yes.

21 Q Did you tell them to order pursuant to this price
22 list?

23 A Yes.

24 Q And who did you send it to at Medex?

25 A Hilda.

1 A Yes.

2 Q And is that?

3 A No, no. It says June 8, but before that I probably
4 sent her, you know, not on a formal letterhead. I probably
5 sent it to her by handwriting before June 8.

6 Q Sent her what?

7 A The new price for their products.

8 Q So, you increased all the prices for the products
9 from what you have.

10 A Some products were increased, some were decreased.
11 For example, if you look at the wheelchair, we decreased the
12 price. But, for the bed we increased because we were selling
13 a lot of beds in the US and we don't really need to sell that
14 much more beds in Puerto Rico. So, bed business picked up, so
15 we increased the price. In the wheelchair business it is not
16 doing exactly; specially when E & J tried to take our business
17 away. We decreased the price on the wheelchairs.

18 Q So, what you are saying is that you increased the
19 price to Medex from \$229.50 per unit for the wheelchair; for
20 the T2000 bed to \$347 if they bought 500 or more. That almost
21 doubled the price. Isn't it?

22 A That does not quite double the price. I am sure you
23 are a business man. When ... inventory, what do you do? You
24 increase the price.

25

1 A Nothing wrong with that if they pay the bill. Even
2 if they order 300, we are not going to tell them we are going
3 to charge you because we are going to lose the customer,
4 anyway, if we try to do that. But, yes, if they only order
5 like 50 units or a hundred units, then, we are going to tell
6 them, next year, you need to pay the higher price because your
7 number is not even close to that 500 price units.

8 Q So, this is something you more or less play by ear
9 depending upon the customer and what their performance is?

10 A Well, this is. Okay, let's say today a customer
11 would say they want to order 500 beds. They will get the 500
12 bed price. But, at the end of the year, if they are too far
13 of, then we will tell them, next year you cannot get that
14 price. Because, obviously, if the person is buying 100 units,
15 they shouldn't get the 500 plus price, but if they are doing a
16 three or four hundred units, they are getting close, we never
17 charge the customer because we will lose the customer.

18 Q You described that you had a meeting with your mother
19 and brother to set up a company in Puerto Rico and you talked
20 about you didn't know what name to deal with. Take me through
21 the steps that let up to the establishment of Medex in Puerto
22 Rico.

23 A What do you mean, "the steps"?

24 Q Well, you had a meeting to discuss, setting up the
25 company.

1 A Well, you know, it is a small family business. We
2 don't even have formal meetings. We might talk this through
3 lunch, talk this through dinner, and we figure it is a good
4 idea because Graham Field wasn't paying the bill; plus Graham
5 Field was promoting mostly E & J wheelchairs. So, we felt that
6 we were being pushed out of the market by Graham Field; being
7 a big giant company. So, we figured that when we had the
8 opportunity we will open the operation here. So, the next step
9 is that me and my brother will contact a lot of different sales
10 people to sell the product for us and at the end we chose Jesús
11 García because we felt he had, you know, he called us all the
12 time; he seemed very motivated. And after that Jesús suggested
13 us, in order for us to do a good job, we needed to have our own
14 operation in Puerto Rico. That is when we come to Puerto Rico
15 and start looking for a warehouse and get a location.

16 Q When is the first time you spoke with Jesús García?

17 A To the best of my knowledge I can only make a guess.
18 It is probably six years ago.

19 Q Okay, let's put it this way. You sent him an
20 agreement and he signed it; and it was dated October of 1997.

21 ATTY ARTURO NEGRON

22 Do we have it here?

23 ATTY KENNETH MCCULLOCH

24 I believe so.

25 ATTY ARTURO NEGRON

1 You hadn't signed any papers, or commitments, or leases, or
2 done any incorporation and things like that to this venture in
3 Puerto Rico.

4 A I am not sure. I might have already started, but I
5 really need to look at the paper work to get the date.

6 Q Okay, okay. Were you aware that the purchases that
7 Graham Field made during the period from September '96 until,
8 through September of '97 were in excess of \$800,000?

9 A Oh, I don't think that is the number.

10 Q What do you think that the purchases by Graham Field
11 had been during that one year period prior to October of 1997?

12 A It should be lower than that. But, again I am not
13 sure for the number. I mean, it just feels like a higher
14 number to me. But, to get the exact number, if you can show me
15 the paper, I can calculate the number for you.

16 Q Well, I am not going to do that here. But, there are
17 invoices that show that. I thought you said that your sales;
18 you came down to Puerto Rico because you weren't satisfied with
19 the job that Graham Field was doing selling your product. Is
20 that right? Or buying your products to resale?

21 A Well, we didn't like the; it is not so much of how
22 much they were purchasing, we just didn't like the idea of they
23 carrying competing products. So, we know they cannot do their
24 best potential that they can if they don't have; versus they
25 don't have a competing product. And second of all, we were

1 really sick and tired of the way they paid, you know, because
2 the deal was. They should pay in ten days, and if they pay in
3 thirty days that is acceptable, but they would pay in 60, 90
4 days; and then we called them; they never called back and that
5 was becoming like a very bad situation. And then, we ...in the
6 general public that Graham Field is doing bad. They are in the
7 process of going to bankruptcy. So, we figured we needed to
8 take some steps, or our product was going to suffer.

9 Q Let me take note from. The first one; from what you
10 tell me you knew VC Medical. VC Medical had agreed not to
11 carry competing wheelchair products.

12 A Yes, that is correct.

13 Q But, Graham Field had competing wheelchair products,
14 too.

15 A Yes.

16 Q Okay. But, VC Medical, even though they didn't carry
17 competing wheelchair products, they did carry products and sell
18 products; other medical supply products that competed against
19 your products.

20 A Yes.

21 Q Now, when is the first time that you heard anything
22 about Graham Field being on the ...of bankruptcy?

23 A It is probably in the, sometime in 1997.

24 Q Do you remember when in 1997?
25

1 A I don't think Graham Field purchased the bed.

2 Q No, no, but the price that you quoted them?

3 A The price I quoted them I think was much more lower
4 than that. But, I need to check my records to see if I can
5 find the price. But, I think that initially when I quote them
6 price was much lower than that.

7 Q When did you initially quote them a price for the
8 T2000 bed?

9 A When we first manufactured the bed in 1996.

10 Q That was the first time you had the T2000 bed?

11 A To the best of my knowledge that is about the time.

12 Q And you did something in writing that you gave to
13 Graham Field with the price of that bed?

14 A Well, I am not sure of having it in writing; but, I
15 remember I talked to Vicente, Jr. about it and he said, "oh, we
16 couldn't buy the same electric bed from you because Graham
17 Field has three factories that is making these beds". They
18 have one factory in Mississippi, one in Michigan, and in one
19 Atlanta, that are making these beds. So, obviously, they have
20 a huge inventory that they need to move themselves. So, we
21 said probably Graham Field is not going to buy the beds from
22 us.

23 Q After Sara Figueroa came over to work for Medex?

24 ATTY ARTURO NEGRON

25 Hilda Salgado.

1 A Yes. That is correct.

2 Q How do you spell it?

3 A L, u, c, i, ll, e.

4 Q And on the other hand, the shareholders of Medex
5 Puerto Rico are your brother Joseph, who has fifty percent of
6 the shares and you, Calvin Chang, who has fifty percent of the
7 shares.

8 A Yes, that is correct.

9 Q Do you remember the attorney who incorporated the
10 Medex in Puerto Rico?

11 A Yes, it is Mr. Jacobo.

12 Q Jacobo Tismorias?

13 A Yes.

14 Q And does Mrs. Hilda Salgado has any sort of ownership
15 interest in Medex?

16 A No.

17 Q When we were reviewing what I think is, yes, the
18 deposition Exhibit number 1, which is titled Exclusive Sales
19 Agreement; which has three signatures here, Calvin Chang,
20 Vicente Guzmán, Jr. and Hilda Salgado, if I am correct; am I
21 correct in assuming that this exclusivity sales agreement
22 related basically only to the wheelchairs and related products?

23 A Yes, that is correct.

24 Q What does "related products" mean?

25

1 A It would mean wheelchairs accessories; wheelchair
2 parts.

3 Q Does it include beds?

4 A No, at that time we didn't even manufacture beds.

5 Q So, basically, if I am correct this Exclusive Sales
6 Agreement between you and VC Medical Distributor in Puerto Rico
7 was an exclusive that they had to buy from you the wheelchairs
8 and they could not sell other wheelchairs than yours?

9 A Yes, that is correct.

10 Q Was this the sales agreement that was revoked
11 because;

12 ATTY KENNETH MCCULLOCH

13 Counselor, I;

14 ATTY ARTURO NEGRON

15 I know, I, I.

16 ATTY KENNETH MCCULLOCH

17 You are leading your own witness on a.

18 ATTY ARTURO NEGRON

19 Yes, I know; but, I am in a cross examination. You
20 brought him. I am just trying to make, you know, basic points.

21

22 ATTY KENNETH MCCULLOCH

23 But, why don't you ask him questions if he is your
24 own witness.

25

ATTY ARTURO NEGRON

1 ...questions. I know, he is my own witness, but I am
2 in the process of cross examine which turns the thing around.

3 ATTY KENNETH MCCULLOCH

4 You can't cross examine your own witness.

5 ATTY ARTURO NEGRON

6 Oh, yes, I can, definitely; because he is not my
7 witness at this point in time. He is your witness; you brought
8 him here. But, I will... you that as ...of evidence.
9 Basically, what I wanted to know is, was this Exclusive Sales
10 Agreement revoked before, if you have the knowledge, before
11 Vicente Guzmán sold his corporation to Graham Field of Puerto
12 Rico?

13 CALVIN CHANG

14 Okay, when you mean revoke, it means cancel?

15 Q Was changed, changed, whatever. When Vicente Guzmán
16 sold his corporation to Graham Field;

17 A Yes.

18 Q Was this Exclusive Sales Agreement working; how do
19 you say it?

20 A Oh, yes. When you sell the agreement is not
21 effective any more.

22 Q It was not in effect?

23 A Yes.

24 Q What was the reason why wasn't in effect?
25

1 A Because Vicente Guzmán, Jr. told me that Graham Field
2 didn't want this to be in effect. They wanted to carry E & J
3 wheelchairs; which is the competing line against Tuffcare
4 wheelchairs.

5 Q This person that has been mentioned here, Jesús
6 García regarding Innovation Corporation, was this the same in
7 relation to the corporation ...Tuffcare in Puerto Rico?

8 A Yes, that is correct.

9 Q Do you know for a fact what is the status of that
10 case at this point in time?

11 A Well, my attorney advised me that the judge has
12 dismissed the case.

13 Q I don't have no more questions.

14 ATTY KENNETH MCCULLOCH

15 I have no more further questions.

16
17 DEPOSITION ENDED.
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